

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 04-10306-PBS
	)	
TREVOR CHARLTON	)	

DEFENDANT'S MOTION IN LIMINE  
TO ADMIT EVIDENCE OF PRIOR GUN POSSESSION  
BY PAUL ROBERSON

Defendant hereby respectfully moves that the Court permit him to introduce in evidence, pursuant to Fed.R.Evid. 404(b), evidence that Paul Roberson -- an individual who was standing in close proximity to the firearm that defendant is charged with possessing -- had previously been convicted with unlawful possession of a firearm.<sup>1</sup>

Evidence regarding other crimes is admissible by a defendant in a criminal case if such evidence tends to negate the defendant's guilt. Such evidence is a "variant of Fed.R.Evid. 404(b), known as 'reverse 404(b) evidence.'" United States v. Stevens, 935 F.2d 1380, 1402 (3rd Cir. 1991). A defendant may introduce other crimes evidence if it is relevant in that it tends to negate the defendant's guilt (Fed.R.Evid. 401), and if its probative value is not outweighed by confusion of the issues,

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<sup>1</sup> Paul Roberson was convicted in the Brockton District Court on May 13, 2002 of carrying a firearm without a license (M.G.L. ch. 269, § 10(j)).

undue delay, or misleading the jury (Fed.R.Evid. 403).<sup>2</sup> Id. at 1405; see also United States v. Miller, 2004 WL 2612420 (E.D.Pa. Nov. 16, 2004) at \*2.

Here, evidence of Roberson's prior gun possession is plainly relevant, as he was standing in close proximity to the firearm charged in this case. Furthermore, proof of the prior conviction is straightforward: defendant will establish the conviction by calling one of the arresting officers and offering a certified copy of the conviction. There is thus a low likelihood that the issue will cause delay or confusion.

TREVOR CHARLTON  
By his attorneys,

/s/ Catherine K. Byrne  
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<sup>2</sup> Prejudice to the defendant is not a consideration since the defendant is offering the evidence exculpatory. See United States v. Miller, 2004 WL 2612420 (E.D.Pa. Nov. 16, 2004) at \*2.

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Certificate of Service

I, Catherine K. Byrne, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on October 24, 2007.

/s/ Catherine K. Byrne  
Catherine K. Byrne